

A SUBSTITUTE RESOLUTION

BY TRANSPORTATION COMMITTEE

**A SUBSTITUTE RESOLUTION AUTHORIZING THE
MAYOR OR HER DESIGNEE TO AWARD AND EXECUTE
A CONCESSION LEASE AGREEMENT WITH DUTY
FREE AIR AND SHIP SUPPLY FOR FC-7313-01;
CONCOURSE "E" DUTY FREE CONCESSION ON
BEHALF OF THE DEPARTMENT OF AVIATION.**

WHEREAS, the City of Atlanta (the "**City**") owns and operates the Hartsfield-Jackson Atlanta International Airport (the "**Airport**"); and

WHEREAS, the City's lease agreement (the "**HMS Concession Lease Agreement**") with Host Atlanta Duty Free Joint Venture ("**HMS**") for the operation of the duty free store on Concourse E, the International Concourse, at the Airport expired in September, 1999, and the duty free store has been operated since that time by HMS, as a tenant at will on a month-to-month basis; and

WHEREAS, the Airport has recognized, since the HMS Concession Lease Agreement expired, that it is in the best financial and other interests of the Airport for a long term concession lease agreement to be entered into with a qualified firm to build, fit, finish, operate, maintain and manage a new duty free store on Concourse "E" at location (E-DF1) (the "**New Duty Free Store**"), on financial terms more advantageous to the City;

WHEREAS, in furtherance of this goal, in April, 2002, the City of Atlanta issued FC-7313-01; Concourse "E"--Duty Free RFP (the "**RFP**") seeking proposals to build, fit, finish, operate, maintain and manage a new Duty Free Store on Concourse E; and

WHEREAS, in August, 2002, two (2) proponents submitted proposals in response to the RFP, Atlanta Duty Free, LLC ("**ADF**") and Duty Free Air & Ship Supply ("**DFASS**"); and

WHEREAS, on October 15, 2003, the City's Chief Procurement Officer notified ADF and DFASS that it had selected DFASS as the most responsible and responsible Proponent responding the the RFP; and

WHEREAS, on October 27, 2003, ADF filed a Notice of Protest with the Chief Procurement Officer to appeal the selection of DFASS as the most responsive and responsible proponent; and

WHEREAS, on November 18, 2003, the Chief Procurement Officer denied ADF's protest and ADF subsequently filed an Administrative Appeal of such denial, pursuant to the City's Code of Ordinances; and

WHEREAS, the Administrative Appeal came before the Procurement Appeals Hearing Officer on March 30 and 31, 2004, and the Officer issued his written Order on such Administrative Appeal and hearing on April 20, 2004; and

WHEREAS, the Order found in favor of the City and specifically stated:

Under Georgia law, a municipality has discretion in the competitive bidding process...Appellant [ADF] did not present compelling evidence that the City's selection of DFASS was not in the best interest of the City. This body will not upset a decision within the discretion of a municipality unless there has been a "gross abuse of discretion," meaning "an arbitrary and unreasonable act or conclusion as to shock the sense of justice and indicate lack of fair and careful consideration."...the decision of the DOP selection [sic] DFASS as the most responsive and responsible proponent responding to the solicitation was neither arbitrary nor capricious.

WHEREAS, given the Order of the Procurement Appeals Hearing Officer and other considerations, the Airport General Manager and the Chief Procurement Officer have determined that it is in the best financial and other interests of the City to move expeditiously to award the Agreement for FC-7313-01, Concourse "E"—Duty Free so as to enable DFASS to begin construction and commence operation of the New Duty Free Store; and

WHEREAS, it is further desirable and in the best interests to expeditiously award the Agreement to DFASS because: [i] DFASS is obligated to pay the total expense to demolish the existing space and construct the new space for the New Duty Free Shop, at no financial risk to the City; [ii] the compensation payable to the City under the DFASS Proposal significantly exceeds compensation payable under the HMS Concessions Lease Agreement or that proposed by ADF in its Proposal, thus accruing a significant financial advantage to the City; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor or her designee is authorized to award and execute a Concession Lease Agreement with Duty Free Air and Ship Supply for FC-7313-01; Concourse "E" Duty Free Concession for an initial term of five (5) years and one renewal term, at the option of the City, for an additional three (3) years, on the terms and conditions set forth in the RFP and those accepted in DFASS' Proposal.

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare the Concession Lease Agreement for execution by the Mayor, to be approved as to form by the City Attorney.

BE IT FINALLY RESOLVED, that the Concession Lease Agreement will not become binding upon the City and the City will incur no liability under it until it has been executed by the Mayor or her designee, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to DFASS.